

State Affirmative Action Officers



Quarterly Review

Published by DAS - State Personnel Division

26th Edition

Affirmative Action Office

March-April 2002

Diversity Events

January 2002

Martin Luther King Jr. Day

February 2002

Black History Month

March 2002

Women's History Month

May 2002

Asian-Pacific American Month

Sept. 15th- Oct 15th 2002

National Hispanic Heritage Month

November 2002

Native American Heritage Month

Minority Business Growing Rapidly in the State

Nebraska's minority-owned businesses increased rapidly in number in the 1990s. Writing in the October issue of *Business in Nebraska*, economist Charles Lampheaur used the most recent data from the U.S. Census Bureau to show that the number of minority-owned businesses in Nebraska increased by 48 percent. The Census information showed that from 1992–1997 Nebraska's minority owned businesses increased to 4,678 while employment in those businesses increased by 142 percent to 8,558.

Further, the percentage increase in the number of minority owned businesses was four times the total state increase in non-farm businesses for the period and the employment increase was eight times the state rate. Lampheaur said African American owned the largest number of minority-owned businesses in the state in 1997 with 1,565 up 16 percent from 1992, while the number of Hispanic-owned businesses increased 25 percent to 1,437. Businesses owned by American Indian/Alaska Natives and by Asian/Pacific Islanders were counted together in 1992 and for a total of 670. In 1997 the two were separated, with 799 owned by American Indian/Alaska Natives and 877 owned by Asian/ Pacific Islanders.

Lampheaur said, "In the future, Nebraska likely will see a significant increase in minority business start-ups, especially by Asian/Pacific Islanders and Hispanics," he concluded. "As a result, the state's economy will become increasingly more dependent on the successful growth of minority-owned businesses. To support growth, more attention to innovative policies, programs, and strategies likely will be needed to assure that an increasing number of minority-owned business start-ups make it to profitability and sustainability."

The Omaha Star
October 11, 2001

State Affirmative Action Officers

Quarterly Review

A publication of:
The State of Nebraska
DAS - State Personnel Division
P.O. Box 94905
Lincoln, NE 68509-4905

**Director/
Affirmative Action Administrator**
Mike McCrory

Affirmative Action Specialist:
Emily Weddle

Governor's Affirmative Action Awards Program

The Affirmative Action Awards Program is an annual program that recognizes State employees, and the departments, divisions, and sections of code agencies that demonstrate leadership in promoting and enhancing the philosophy and spirit of equal opportunity employment, affirmative action, and cultural diversity.

Any classified or non-classified employee may nominate another clas-

sified or non-classified employee, department, division or section for the Governor's Affirmative Action Award.

Each recipient will receive an "Affirmative Action Award" certificate at a reception with refreshments held at the Governor's Residence. Governor Johann's will be present at the reception to congratulate the winners for their continued efforts in promoting and enhancing the philos-

ophy and spirit of equal opportunity employment, affirmative action, and cultural diversity within the State of Nebraska.

Nominations for the year 2002 will be accepted until March 15, 2002.

Please call Emily Weddle at (402) 471-3678 or email at eweddle@notes.state.ne.us with questions, comments, or requests for nomination forms.

Companies Cheer Decision, But Basic Rules Still Apply

Employers cheered the Supreme Court's decision that a Toyota assembly line worker's physical impairment must affect both her ability to perform a specific job and activities related to daily living to be covered by the ADA. Even with this ruling, companies must still adhere to the ADA's basic rules on standards and other qualifications used to help select the best person for the job.

Here's a checklist to help determine if your hiring process is ADA OK:

1. **Job Related**—Any qualification standard, test, or other selection criterion that screens out a person with a disability on the basis that the disability must be a legitimate measure or qualification for the specific job in question, not just for a general class of jobs. Selection criteria can be used to evaluate or measure the functions of a particular job, not just its essential functions; employers are free to hire applicants who can perform these functions. Any employment tests must accurately reflect the skills, aptitudes, or other factors being measured, but not the

impaired sensory, manual, or speaking abilities of the applicant or employee with a disability, unless the test was designed to measure those abilities.

2. **Physical Agility Tests**—You can require that applicants take a physical agility test before a job offer is made to determine if they have the physical qualifications necessary for the job, provided that the test is simply an agility test and not a medical examination. It is illegal to require either a medical screening or examination before making a conditional job offer.
3. **Blanket Exclusions**—Physical or mental job qualification standards that result in the exclusion of an entire class of people with certain disabilities are usually considered suspect by the EEOC. Also vulnerable to challenge are exclusions based on outdated medical knowledge and technology or instituted because of concern about future medical or workers' compensation costs.
4. **Direct Threat**—You do not have to hire someone with a disability who poses a "direct threat" to the

health or safety of themselves or others, provided the same standards are applied to all applicants for a particular job. To establish that a "direct threat" exists, you must

- a. demonstrate there is a significant risk that substantial harm could occur if the person were hired
- b. identify the specific risk posed by the person's disability
- c. show it is a current risk, not just one that is speculative or remote
- d. base your risk assessment on objective medical or other factual evidence about that specific person
- e. consider whether a reasonable accommodation would eliminate or reduce the risk factor below the level of a direct threat

*BNA- Fair Employment Practices
January 17, 2002
Vol. 38, NO 939
Page 12*

State of Nebraska Minority Workforce through the Years

	1993	1994	1995	1996	1997	1998	1999	2000	2001
Executive/Mgr	38	44	46	40	47	45	50	51	60
Professional	330	356	359	368	361	389	406	422	416
Para-Professional	124	138	130	142	150	138	141	137	148
Technical	39	41	37	35	36	37	40	35	34
Skilled Craft	7	7	10	13	12	9	10	10	9
Office Clerical	123	130	137	132	124	120	123	120	103
Service Maint.	99	100	101	106	107	102	101	96	96
Protective Service	99	104	105	119	122	113	108	110	107
Total	859	920	925	955	959	953	979	981	973
<i>% of Total Pop.</i>	<i>5.30%</i>	<i>5.80%</i>	<i>5.70%</i>	<i>5.98%</i>	<i>5.99%</i>	<i>5.89%</i>	<i>6.02%</i>	<i>6.02%</i>	<i>5.96%</i>

This table shows a snapshot of the State of Nebraska Minority workforce throughout the years. The table is sorted by EEO job categories which are used by the State of Nebraska to categorize the jobs within the State of Nebraska.

Allowing Racial Epithets in the Workplace Can Be Costly

An employee learned about a job at plant through a supervisor who did not become his boss. Once in the position the employee was regularly subjected to racially offensive “jokes” by that supervisor, usually in the presence of co-workers, and comments by other co-workers. His supervisor allegedly witnessed the “joking” and laughed along. During the employee’s six months on the job, he heard (an offensive racial epithet) used more than 50 times. The employee ultimately quit but never formally reported the harassment because, he said, his supervisor had done nothing when hearing these things and feared he would lose his job.

At trial, the supervisor admitted hearing other managers make racist comments, knowing his obligation under company policy to report the harassment and doing nothing. The co-workers admitted that such comments were made. The jury found for the employee and awarded \$5,162 for back pay, \$30,000 for emotional distress, and \$1 million in punitive damages.

BN4
Fair Employment Practices
November 8, 2001
Vol. 37 No. 935
Page 137

Comments:

As a supervisor it is your responsibility to ensure that the working environment of your employee’s is positive. When a formal harassment plan is in place it is not only the responsibility of the employee being harassed to use this policy, but is also the responsibility of the supervisor and co-workers. There is no reason why a person should have to work in a negative or hostile working environment if all employees are taking positive steps to not allow behavior like this in the work place.

Affirmative Action Newsletter Distribution Change

The Quarterly Affirmative Action Newsletter after the month of March will be posted on-line at <http://www.das.state.ne.us/personnel/pubs.htm>.

This change is hoped to allow individuals easier access to the Affirmative Action Newsletter. If you are not able to access the internet and would like to continue receive a paper copy of the newsletter please contact Emily Weddle, Affirmative Action Specialist, at (402) 471-3678 or email at eweddle@notes.state.ne.us.

McDonald's Ex-Manager Awarded \$5 Million by Cleveland Jury in AIDS Discrimination Case

A former McDonald's restaurant manager, who says he was forced out of his job after the corporation learned he was HIV-positive, was awarded \$5 million in compensatory damages by a jury.

A 20-year veteran of McDonald's franchise restaurants, the manager was hired to manage a corporate store in July 1997, with promises of swift advancement. At that point, he had been recognized three times as an "outstanding manager" and his restaurants had been named "outstanding stores" six times.

He was hospitalized with an AIDS-related illness and when his general manager learned of his condition, he was not allowed to return to work until he signed an agreement allowing the company to review his medical records. Upon returning to work his general manager stripped him of his management duties. After an unpaid leave of absence he was transferred to another store and told he would be a co-manager, but his duties would be limited to selling hamburgers at the front counter.

Once the manager's HIV-positive status was known, his supervisors set him up to fail and made his work life so stressful, given his disability, he had no choice but to resign.

*BN4
Fair Employment Practices
November 8, 2001
Vol. 37 No. 935
Page 133*

State
Affirmative Action
Officers

DAS - State Personnel Division
P.O. Box 94905
Lincoln, NE 68509-4905

To:
